

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

08-CR-00010-PJS-FLN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	JUDGE PATRICK J. SCHILTZ
	)	
v.	)	
	)	MAGISTRATE JUDGE
	)	FRANKLIN L. NOEL
FRANCIS LEROY McLAIN,	)	
	)	
Defendant.	)	
	)	

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**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT'S MOTION TO TAKE JUDICIAL NOTICE  
FEDERAL RULE OF EVIDENCE 201**

The Defendant, Francis Leroy McLain, by his attorney, Rick E. Mattox, hereby would show this Court the following.

The Magistrate's Report & Recommendation concerning the juror's oath reads as follows:

**H. Defendant's Objection to the Juror's Oath [#64]**

The Defendant objects to the trial juror's oath. This motion must be denied without prejudice as it is more appropriately raised before the trial court.

Magistrate's Report And Recommendation of May 14, 2008, p. 12.

However, the trial court's ruling reads as follows:

7. McLain's motion objecting to the juror's oath [Docket No. 64] is DENIED WITHOUT PREJUDICE.

Trial Court's Order of June 4, 2008, p. 2.

Defendant needs this Court to acknowledge the adjudicative facts of this issue now, not as some later nebulous date in the future.

#### JUDICIAL NOTICE

Judicial notice is permitted of facts that are generally known within the territory of the court's jurisdiction or are capable of accurate and ready determination from a source whose accuracy is beyond reasonable doubt. Fed. R. Evid. 201(b).

*Holloway v. Lockhart*, 813 F.2d 874 (8th Cir. 1987).

Federal Rule of Evidence 201 allows the courts to take judicial notice of adjudicative facts. Rule 201 is not the only way courts may take judicial notice. Courts may also take judicial notice of statutes and administrative regulations. *Roemer v. Board of Public Works*, 426 U.S. 736, 742 n. 4 (1976); *Lee v. Bartlett and Co.*, 121 B.R. 872, 874 (D. Kan. 1990). The federal courts will take judicial notice of the United States Constitution, federal statutes, and federal case law. *Marbury v. Madison*, 5 U.S. 137 (1807); *Cohen v. United States*, 129 F.2d 733, 736 (8th Cir. 1942).

*In re Phillips*, No. 04-6025EM (8th Cir. 11/24/2004).

Rule 201 of the Federal Rules of Evidence permits courts to take judicial notice of adjudicative facts not subject to reasonable dispute in that the facts are either "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Id.*

*United States v. TK*, No. 97-3251 n. 5 (8th Cir. 1/12/1998).

Defendant submits that the facts listed in this Motion to Take Judicial Notice, 1 through 4, are capable of accurate and ready determination by resort to the Constitution, the English Common Law, statutes enacted by Congress, and the Federal Rules of Criminal Procedure.

WHEREFORE, Defendant Francis Leroy McLain moves this Court to take judicial notice as requested.

Respectfully submitted,

Date: August 7, 2008

*s/Rick E. Mattox*

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